

# EXHIBIT X

# EXHIBIT X

Hearing Date and Time: September 22, 2011 at 10:00 a.m. (EDT)

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
DPH HOLDINGS CORP., <i>et al.</i> ,	:	Case No. 05-44481 (RDD)
	:	Jointly Administered
Reorganized Debtors.	:	
	:	

**RESPONSE OF VLADIMIR AVERBUKH AND ALESANDER AVERBUKH TO THE  
REORGANIZED DEBTORS' MOTION FOR ORDER ENFORCING MODIFICATION  
PROCEDURES ORDER, MODIFIED PLAN AND PLAN MODIFICATION ORDER  
INJUNCTION, ETC. AND CROSS-MOTION FOR RELIEF  
FROM THE "PERTINENT ORDERS"**

Vladimir Averbukh ("Vladimir") and Alesander Averbukh ("Alesander") (collectively, the "Averbukhs" or the "Cross-Movants") hereby respond to the Reorganized Debtors' Motion for Order (I) Enforcing Modification Procedures Order, Modified Plan and Plan Modification Order Injunction and Forty-Seventh Omnibus Claims Objection Order Against Averbukhs, as

Plaintiffs, in Maryland State Court Wrongful Death Action and (II) Directing Averbukhs to Dismiss Action to Recover Upon Discharged and Expunged Claim (the “Averbukh Injunction Motion”); and, in the alternative, hereby cross-move (the “Cross-Motion”) for an order granting the Cross-Movants relief from the “Pertinent Orders” (defined below), and in support of this Cross-Motion respectfully represent as follows:

**BACKGROUND**

1. On October 8 and 14, 2005, DPH Holdings Corp., *et al.* (the “Debtors” or “Reorganized Debtors”) each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

2. On November 9, 2009, Vladimir (individually and as personal representative of the estate of Boris Averbukh (“Boris”), his father) and Alesander (Vladimir’s brother) Averbukh filed a Complaint and Election for Jury Trial (the “Complaint”) in the Circuit Court for Prince George’s County, State of Maryland (the “State Court Action”) against Delphi Corporation, Delphi Automotive Systems LLC (collectively, the “Delphi Defendants”), and other entities alleging liability for the wrongful death of Boris. To summarize, the claims asserted in the Complaint stem from an automobile accident which occurred subsequent to the Debtors’ bankruptcy filings. On or about April 7, 2007, Alla Averbukh was driving a rented vehicle in which Boris was a front-seat passenger. Upon exiting Interstate 95 onto westbound Route 212, the vehicle left the off-ramp and struck a tree. Although the front driver’s side air bag deployed for Alla, the front passenger side airbag did not deploy for Boris. A copy of the Complaint is attached as Exhibit “A.”

3. On June 16, 2009, this Court entered an Order (A)(1) Approving Modifications to Debtors’ First Amended Plan of Reorganization (as Modified) and Related Disclosures and

Voting Procedures and (II) Setting Final Hearing Date to Consider Modifications to Confirmed Amended Plan of Reorganization and (B) Setting Administrative Expense Claims Bar Date and Alternate Transaction Hearing Date (Docket No. 17032) (the “Modification Procedures Order”).

4. The Modification Procedures Order set July 15, 2009 as the deadline for all creditors holding administrative expense claims for the period from the commencement of the chapter 11 cases in October, 2005 through June 1, 2009 to file a claim.

5. As conceded by the Debtors in the Averbukh Injunction Motion, no notice of the administrative expense claim bar date was mailed to the Averbukhs or to their counsel in the State Court Action. Averbukh Injunction Mot. ¶¶ 43-44.

6. On September 9, 2009, an Administrative Expense Claim Request in the amount of \$1,500,000 was filed in Alla’s name for damages pertaining to both injuries and the wrongful death of Boris (the “Alla Administrative Claim”). On April 16, 2010, the Reorganized Debtors filed their Forty-Seventh Omnibus Objection Pursuant to 11 U.S.C. § 503(b) And Fed. R. Bankr. P. 3007 To (I) Disallow And Expunge (A) Certain Administrative Expense Books and Records Claims, (B) A Certain Administrative Expense Duplicate Claim, And (C) Certain Administrative Expense Duplicate Substantial Contribution Claims, and (II) Modify Certain Administrative Expense Claims (Docket No. 19873) (the “Administrative Claim Objection”), through which the Debtors sought to expunge the Alla Administrative Claim.

7. On May 25, 2010, this Court entered an Order (the “Alla Claim Expungement Order”) disallowing and expunging the Alla Administrative Claim (Docket No. 20188).

8. On August 30, 2011, the Debtors filed the Averbukh Injunction Motion. Through the Averbukh Injunction Motion, the Debtors sought to, *inter alia*, enjoin the Averbukhs from prosecuting the State Court Action. The Debtors argue the Averbukhs should be enjoined from

further prosecution of the State Court Action because “the Averbukhs should be deemed to have joined in the prior administrative expense claim...and be bound to and barred by this Court’s Order denying and expunging it.” Debtors’ Averbukh Injunction Motion, p. 2, ¶ 4.

9. On September 14, 2011, the Debtors granted an extension to the Averbukhs until September 19, 2011 to file a responsive pleading to the Averbukh Injunction Motion.

10. On July 30, 2009, this Court entered the Order Approving Modifications Under 11 U.S.C. § 1127(b) to (I) First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors in Possession, as Modified and (II) Confirmation Order (the “Plan Modification Order”) (Docket No. 18707). A copy of the plan modifications were attached to the Plan Modification Order.

11. The Effective Date of the modified plan occurred on October 6, 2009.

#### **REQUEST FOR RELIEF**

12. The Averbukhs respectfully move the Court for an Order denying the pending Motion, or in the alternative by Cross-Motion, seek relief from the allegedly applicable Modification Procedures Order, the Claim Expungement Order, the Plan Modification Order and the permanent injunction contained in the modified plan (together, the “Pertinent Orders”) to continue the State Court Action against the Delphi Defendants for the reasons set forth in more detail below.

#### **JURISDICTION AND VENUE**

13. This Court has jurisdiction over this Cross-Motion pursuant to 28 U.S.C. §§ 157 and 1334. This Cross-Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are section 362(d)(1) of the Bankruptcy Code and Rule 4001(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rule[s]”).

**BASIS FOR RELIEF REQUESTED**

***Debtors' Motion Must be Denied Because No Notice of the Allegedly Applicable Administrative Claims Bar Date was Provided and Because the Averbukhs' Wrongful Death Claim is Not An Administrative Claim***

14. The Debtors' pending motion must be denied because: (1) no notice of the administrative expense claim bar date was provided to the Averbukhs; and (2) even if the Averbukhs had received notice of a requirement to file "administrative claims" by a certain date, their wrongful death claim is not an "administrative claim."

15. It is undisputed that Delphi never provided any type of written notice to the Averbukhs of the allegedly applicable administrative expense claim bar date. The Debtors' pending motion contains absolutely no evidence of any efforts whatsoever to identify and notify personal injury and/or wrongful death claimants of the allegedly applicable bar date.

16. Furthermore, even if proper notice of the administrative claim expense bar date had been provided to the Averbukhs, the relief Debtors currently request would still be improper because the Averbukhs' wrongful death claim is not an administrative claim.

17. Under Article 1.4 of the modified plan, the term "Administrative Claim" is defined as

a Claim (other than the GM Administrative Claim) for payment of an administrative expense of a kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code, including, but not limited to, the DIP Facility Revolver Claim, the DIP Facility First Priority Term Claim, the DIP Facility Second Priority Term Claim, the actual, necessary costs and expenses, incurred on or after the Petition Date, of preserving the Estates and operating the business of the Debtors, including wages, salaries, or commissions for services rendered after the Petition Date, Professional Claims, all fees and charges assessed against the Estates under chapter 123 of title 28, United States Code, and all Allowed Claims that are to be treated as Administrative Claims pursuant to a Final Order of the

Bankruptcy Court pursuant to section 546(c)(2)(A) of the Bankruptcy Code.

18. The plan references section 503(b) of the Bankruptcy Code to describe the types of expenses which are included in the term “administrative claim.” Reference to section 503(b) reveals that personal injury claimants are not included in the definition of who will be paid administrative claims.

19. In addition, inclusion under section 503 in the Delphi bankruptcy plan is not enough to qualify a demand as an “administrative claim.” The claimant must also be “entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code.” Section 507(a)(1) certainly does not include personal injury or wrongful death claims in the description of claims “entitled to priority.”

20. The United States District Court for the Western District of Texas faced the same question (whether a post-petition personal injury claim against Delphi was an administrative claim) and the Court specifically held that “plaintiff’s products liability cause of action is not an “administrative claim” as defined by the bankruptcy court’s order – it is neither a claim for payment of an administrative expense under § 503(b) of the Bankruptcy Code nor a claim entitled to priority pursuant to § 507(a)(1) of the Code.” Exhibit “B” (Order from Smith v. Delphi Automotive Systems, LLC, et al., Cause No. SA-09-CA-296-OG).

21. Because the Averbukhs’ wrongful death claim is not an administrative claim, it is not subject to any bar date and the the Averbukhs are entitled to move forward with their claims against the Delphi Defendants and/or their successors in interest in Maryland state court.

***Alternatively, the Averbukhs Are Entitled to Relief from the Pertinent Orders to Pursue Their Wrongful Death Claim Against the Delphi Defendants***

22. Federal Rule of Bankruptcy Procedure 9024 provides that, with certain exceptions not applicable here, Federal Rule of Civil Procedure (the “Civil Rule[s]”) 60 applies in cases under the Bankruptcy Code.

23. Civil Rule 60(b) provides that, “[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) . . . applying [the judgment] prospectively is no longer equitable; or (6) any other reason that justifies relief.”

24. This Court and other courts have applied the flexible standard enunciated in *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 383 (1992), in evaluating requests for relief under Civil Rule 60(b)(5). Under the *Rufo* standard, the moving party “must show that a significant change in circumstances, either factual or legal,” warrants the relief requested. *See In re Petition of the Bd. of Directors of Hopewell Int’l Ins., Ltd.*, 281 B.R. 200, 206-08 (Bankr. S.D.N.Y. 2002) (Gropper, J.) (noting that *Rufo* standard has been applied to requests for relief from plan discharge injunction).

25. Courts evaluating requests under Civil Rule 60(b)(6) have generally applied an “exceptional circumstances” test in determining whether to grant relief. *See Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863-64 (1988).

26. Under Civil Rule 60(c)(1), a motion brought under Rule 60(b) must be made within “a reasonable time.” Given that personal injury counsel to the Averbukhs engaged bankruptcy counsel upon the filing of the Averbukh Injunction Motion, the Averbukhs respectfully submit that the filing of their objection to the Averbukh Injunction Motion and the Cross-Motion was timely.



27. This Court should grant the Averbukhs relief from the Pertinent Orders for the reasons stated above – specifically, (1) no notice of the administrative expense claim bar date was provided to the Averbukhs; and (2) even if the Averbukhs had received notice of a requirement to file “administrative claims” by a certain date, their wrongful death claim is not an “administrative claim.”

WHEREFORE, the Cross-Movants respectfully request relief from the permanent injunction and/or the automatic stay to proceed with the State Court Action against the Delphi Defendants and/or their successor(s) in interest to be compensated for their damages.

Dated: New York, New York  
September 19, 2011

CIARDI CIARDI & ASTIN

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*Counsel to Vladimir Averbukh (Individually and as  
Personal Representative for the Estate of Boris  
Averbukh) and Alesander Averbukh*

## **EXHIBIT A**

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VLADIMIR AVERBUKH, Individually  
and as Personal Representative of the  
Estate of Boris Averbukh,  
117 Fennington Circle  
Owings Mills, Maryland 21117

And

ALESANDER AVERBUKH, Individually,  
6994 Millbrook Park Drive, Apt. 2D  
Baltimore, Maryland 21215

Plaintiffs

And

ALLA AVERBUKH, Individually,  
3 Russem Court, Apt. 2A  
Baltimore, Maryland 21215

Use Plaintiff

v.

ENTERPRISE RAC COMPANY  
OF MARYLAND, LLC  
2 Research Place  
Rockville, Maryland 20850

Serve Registered Agent:

The Corporation Trust Incorporated  
300 E. Lombard Street, Suite 1400  
Baltimore, Maryland 21202

And

ENTERPRISE LEASING COMPANY  
2 Research Place  
Rockville, Maryland 20850

Serve Registered Agent:

The Corporation Trust Incorporated  
300 E. Lombard Street  
Baltimore, Maryland 21202

And

IN THE  
CIRCUIT COURT  
FOR  
PRINCE GEORGE'S COUNTY

Case No. \_\_\_\_\_

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\*  
ENTERPRISE RENT-A-CAR COMPANY  
600 Corporate Park Drive  
St. Louis, Missouri 63105

\*  
Serve Registered Agent:  
CT Corporation System  
120 South Central Avenue  
Clayton, Missouri 63105

And \*

\*  
DELPHI CORPORATION  
5725 Delphi Drive  
Troy, Michigan 48098

\*  
Serve Registered Agent:  
The Corporation Company  
30600 Telegraph Road, Suite 2345  
Bingham Farms, Michigan 48025

And \*

\*  
DELPHI AUTOMOTIVE SYSTEMS LLC  
7525 Delphi Drive  
Troy, Michigan 48098

\*  
Serve Registered Agent:  
The Corporation Trust Incorporated  
300 E. Lombard Street  
Baltimore, Maryland 21202

And \*

\*  
THE ROCKMONT MOTOR COMPANY,  
15301 Frederick Road  
P.O. Box 72  
Rockville, Maryland 20850

\*  
Serve Registered Agent:  
James M. Hastings  
305 Piping Rock Drive  
Silver Springs, Maryland 20905

And \*

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**FILED**

NOV 9 2009

CLERK OF THE DISTRICT COURT  
FOR PRINCE GEORGES COUNTY, MD.

ca109-  
35924

ALLA AVERBUKH  
3 Russem Court, Apt 2A  
Baltimore, Maryland 21215

Defendants

\* \* \* \* \*  
**COMPLAINT AND ELECTION FOR JURY TRIAL**

Plaintiffs, Vladimir Averbukh, in his individual capacity and as Personal Representative of the Estate of Boris Averbukh, and Alesander Averbukh, in his individual capacity, by and through their attorneys Paul D. Bekman and Gregory G. Hopper of Salisbury, Clements, Bekman, Marder & Adkins, L.L.C., and with notice to the Use Plaintiff, Alla Averbukh, hereby file suit against Defendants, Enterprise RAC of Maryland, LLC, Enterprise Leasing Company, Enterprise Rent-A-Car Company, Delphi Corporation, Delphi Automotive Systems LLC, The Rockmont Motor Company, and Alla Averbukh, and, in support thereof, state as follows:

**Allegations Common to All Counts**

1. Plaintiff, Vladimir Averbukh, is a citizen of the State of Maryland and resides in Baltimore County, Maryland. As Boris Averbukh's son, Vladimir Averbukh is a proper person to bring a wrongful death claim pursuant to § 3-902 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland. Additionally, Vladimir Averbukh has been named the Personal Representative of the Estate of Boris Averbukh and is the proper person to bring a survival claim on behalf of the Estate.

2. Plaintiff, Alesander Averbukh, is a citizen of the State of Maryland and resides in Baltimore County, Maryland. As Boris Averbukh's son, Alesander Averbukh is also a proper

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person to bring a wrongful death claim pursuant to § 3-902 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.

3. Use Plaintiff and Defendant, Alla Averbukh, is a citizen of the State of Maryland and resides in Baltimore County, Maryland. As Boris Averbukh's wife at the time of the occurrence, Alla Averbukh is a potential wrongful death beneficiary pursuant to § 3-902 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland and must be named as a Use Plaintiff under the Maryland Rules.

4. Defendant, Enterprise RAC of Maryland, LLC ("Enterprise RAC"), is a Delaware LLC with its principal place of business in Montgomery County, Maryland.

5. Defendant, Enterprise Leasing Company ("Enterprise Leasing"), is a Maryland corporation with its principal place of business in Montgomery County, Maryland.

6. Defendant, Enterprise Rent-A-Car Company ("Enterprise Rent-A-Car"), is a Missouri corporation with its principal place of business in Missouri.

7. Defendants, Enterprise RAC, Enterprise Leasing, and Enterprise Rent-A-Car, are referred to collectively herein as "the Enterprise Defendants."

8. Defendant, Delphi Corporation, is a Delaware corporation with its principal place of business in Michigan.

9. Defendant, Delphi Automotive Systems LLC, is a Delaware limited liability company with its principal place of business in Michigan.

10. Defendants, Delphi Corporation and Delphi Automotive Systems LLC, are referred to collectively herein as "the Delphi Defendants."

11. Defendant, The Rockmont Motor Company, is a Maryland corporation with its principal place of business in Montgomery County, Maryland.

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12. Jurisdiction rests with the Circuit Court because the amount in controversy exceeds \$30,000 and venue is proper in Prince George's County, Maryland because this is where the accident occurred and one or more of the defendants regularly conduct business in Prince George's County.

13. On or about April 7, 2007, Use Plaintiff and Defendant, Alla Averbukh, was driving a 2006 Chevrolet Cobalt (VIN # 1G1AK55F467619606, hereinafter the "Cobalt") she and/or Boris Averbukh had rented from the Enterprise Defendants southbound on I-95 in Prince George's County, Maryland.

14. The Cobalt left the roadway while on the exit ramp from southbound I-95 to westbound Route 212 and struck a tree.

15. Boris Averbukh was wearing his available shoulder and lap seat belt at the time the Cobalt collided with the tree. The front driver's air bag of the Cobalt deployed in the collision with the tree, but the front passenger air bag of the Cobalt did not deploy, leaving Boris Averbukh without the protection of a frontal air bag.

16. As a direct and proximate result of the failure of the front passenger air bag of the Cobalt to deploy, Boris Averbukh suffered severe injuries beyond those he would have sustained had the air bag deployed and died despite properly wearing his available lap and shoulder seat belt.

17. As a direct and proximate result of the acts and/or omissions of the defendants described herein and the failure of the front passenger air bag of the Cobalt to deploy, Boris Averbukh suffered severe and fatal injuries for which he required and received medical treatment prior to his death.

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18. As a direct and proximate result of the acts and/or omissions of the defendants described herein and the failure of the front passenger air bag of the Cobalt to deploy, plaintiffs have suffered economic and noneconomic damages, including, but not limited to, mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, marital care, parental care, attention, advice, counsel, training, guidance, education and support.

**COUNT I – NEGLIGENCE**  
**The Estate's claim against the Enterprise Defendants**

19. Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

20. Prior to April 7, 2007, the Enterprise Defendants were engaged in the distribution, rental, leasing and/or sale of motor vehicles, including the rental of motor vehicles to consumers such as Boris and Alla Averbukh.

21. The Enterprise Defendants owed a duty of care to properly inspect, test, maintain and/or repair their rental vehicles and the air bag systems thereon, including the Cobalt and its air bag system.

22. The Enterprise Defendants, individually and/or collectively, breached their duty of care and were thereby negligent by failing to properly inspect, test, maintain and/or repair the Cobalt so that the front passenger airbag system would function and/or deploy in a crash.

23. As a direct and proximate result of the combined negligence of the Enterprise Defendants, Boris Averbukh suffered physical pain and suffering, mental anguish, emotional injury and trauma, and other related injuries and death.

WHEREFORE, Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh hereby demands judgment against the Enterprise Defendants, jointly and



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severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

**COUNT II - NEGLIGENCE**  
**Individual Plaintiffs' claim against the Enterprise Defendants**

24. Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 23 as if fully set forth herein.

25. As a direct and proximate result of the combined negligence of the Enterprise Defendants, resulting in the death of Boris Averbukh, a cause of action has accrued in accordance with § 3-901, et. seq., of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland to Plaintiffs and Use Plaintiff for compensation for all the damages, injuries, and losses, past, present, and future, which they have sustained and will sustain in the future including, but not limited to, their severe mental anguish and emotional pain, pecuniary loss, and the loss and deprivation of Boris Averbukh's society, companionship, comfort, care, attention, advice, counsel, services, and support, items that Boris Averbukh would have afforded and rendered to them had he continued to live.

WHEREFORE, Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby demand judgment against the Enterprise Defendants, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

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**COUNT III - BREACH OF IMPLIED WARRANTY**  
**The Estate's claim against the Enterprise Defendants**

26. Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

27. The Enterprise Defendants are merchants with respect to the sale, rental and/or leasing of vehicles.

28. Pursuant to section 2A-212 and/or 2-314, the Enterprise Defendants impliedly warranted to Boris and Alla Averbukh that the Cobalt would be merchantable and fit for its ordinary and particular purposes. Boris and Alla Averbukh relied upon these implied warranties and the Enterprise Defendants' status as merchants.

29. The Enterprise Defendants breached their warranties to Boris and Alla Averbukh because the Cobalt was not fit for its ordinary and particular purposes in that the Cobalt and its frontal air bag system were defective at the time of rental and/or leasing and the passenger air bag failed to deploy in the subject crash.

30. As a direct and proximate result of the above-described breach of warranty by the Enterprise Defendants, Boris Averbukh suffered physical pain and suffering, mental anguish, emotional injury and trauma, and other related injuries and death.

WHEREFORE, Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh hereby demands judgment against the Enterprise Defendants, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

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**COUNT IV -- BREACH OF IMPLIED WARRANTY**  
**Individual Plaintiffs' claim against the Enterprise Defendants**

31. Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 30 as if fully set forth herein.

32. As a direct and proximate result of the breach of warranties of the Enterprise Defendants, resulting in the death of Boris Averbukh, a cause of action has accrued in accordance with § 3-901, et. seq., of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland to Plaintiffs and Use Plaintiff for compensation for all the damages, injuries, and losses, past, present, and future, which they have sustained and will sustain in the future including, but not limited to, their severe mental anguish and emotional pain, pecuniary loss, and the loss and deprivation of Boris Averbukh's society, companionship, comfort, care, attention, advice, counsel, services, and support, items that Boris Averbukh would have afforded and rendered to them had he continued to live.

WHEREFORE, Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby demand judgment against the Enterprise Defendants, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

**COUNT V -- STRICT LIABILITY**  
**The Estate's claim against Defendant Rockmont and The Enterprise Defendants**

33. Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

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34. Defendant Rockmont and the Enterprise Defendants are in the business of distributing, selling, renting and/or leasing vehicles and distributed, sold, rented and/or leased the Cobalt in the ordinary course of their businesses.

35. At the time of the Cobalt was sold, rented and/or leased and left the possession or control of the defendants, the Cobalt was in a defective condition and was unreasonably dangerous to users and consumers such as Boris Averbukh by reason of defects in the design, testing, assembly and/or manufacture of its air bag system, as well as the failure of any warnings regarding the potential non-deployment of the air bag system.

36. The Cobalt was expected to and did reach users and consumers such as Boris Averbukh without substantial change in its condition.

37. As a direct and proximate result of the actions and inactions of Defendant Rockmont and the Enterprise Defendants and the defective and unreasonably dangerous airbag system and/or the lack of warnings regarding the same, Boris Averbukh suffered physical pain and suffering, mental anguish, emotional injury and trauma, and other related injuries and death.

WHEREFORE, Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh hereby demands judgment against Defendant Rockmont and the Enterprise Defendants, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

#### **COUNT VI - STRICT LIABILITY**

##### **Individual Plaintiffs' claim against Defendant Rockmont and The Enterprise Defendants**

38. Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 37 as if fully set forth herein.

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39. As a direct and proximate result of the actions and inactions of Defendant Rockmount and the Enterprise Defendants and the defective and unreasonably dangerous airbag system and/or the lack of warnings regarding the same, resulting in the death of Boris Averbukh, a cause of action has accrued in accordance with § 3-901, et. seq., of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland to Plaintiffs and Use Plaintiff for compensation for all the damages, injuries, and losses, past, present, and future, which they have sustained and will sustain in the future including, but not limited to, their severe mental anguish and emotional pain, pecuniary loss, and the loss and deprivation of Boris Averbukh's society, companionship, comfort, care, attention, advice, counsel, services, and support, items that Boris Averbukh would have afforded and rendered to them had he continued to live.

WHEREFORE, Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby demand judgment against Defendant Rockmount and the Enterprise Defendants, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

**COUNT VII - ALTER EGO/PIERCING CORPORATE VEIL**  
**The Estate's claim against Defendant Enterprise Rent-A-Car Company**

40. Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 23 as if fully set forth herein.

41. At all relevant times, Defendant, Enterprise Rent-A-Car Company, had complete control and domination of the finances, policy and business practices of Defendants, Enterprise RAC and Enterprise Leasing, such that they had no separate mind, will or existence of their own.

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42. Defendant, Enterprise Rent-A-Car, used its control of Defendants, Enterprise RAC and Enterprise Leasing, to violate the duties owed to Boris Averbukh described herein, to commit the wrongs described herein and/or to evade its legal obligations owed under the law.

43. As a direct and proximate result of the control Defendant, Enterprise Rent-A-Car Company, exerted over Defendants, Enterprise RAC and Enterprise Leasing, and the negligent actions and inactions complained of herein, Boris Averbukh suffered physical pain and suffering, mental anguish, emotional injury and trauma, and other related injuries and death.

WHEREFORE, Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh hereby demands judgment against Defendant, Enterprise Rent-A-Car Company, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

**COUNT VIII - ALTER EGO/PIERCING CORPORATE VEIL**  
**Individual Plaintiffs' claim against Defendant Enterprise Rent-A-Car Company**

44. Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 25 and 40 through 43 as if fully set forth herein.

45. As a direct and proximate result of the control Defendant, Enterprise Rent-A-Car Company, exerted over Defendants, Enterprise RAC and Enterprise Leasing, and the negligent actions and inactions complained of herein, resulting in the death of Boris Averbukh, a cause of action has accrued in accordance with § 3-901, et. seq., of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland to Plaintiffs and Use Plaintiff for compensation for all the damages, injuries, and losses, past, present, and future, which they have sustained and will sustain in the future including, but not limited to, their severe mental anguish and emotional pain,

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pecuniary loss, and the loss and deprivation of Boris Averbukh's society, companionship, comfort, care, attention, advice, counsel, services, and support, items that Boris Averbukh would have afforded and rendered to them had he continued to live.

WHEREFORE, Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby demand judgment against Defendant, Enterprise Rent-A-Car Company, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

**COUNT IX - STRICT LIABILITY**  
**The Estate's claim against the Delphi Defendants**

46. Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

47. The Delphi Defendants designed, manufactured, tested, inspected, sold and supplied the frontal air bag system of the Cobalt in the ordinary course of their businesses.

48. At the time it was sold by the Delphi Defendants, the frontal air bag system of the Cobalt was in a defective condition and was unreasonably dangerous to users and consumers such as Boris Averbukh by reason of defects in its design, testing, assembly and/or manufacture, as well as the lack of any warnings regarding its potential non-deployment.

49. The frontal air bag system of the Cobalt was expected to and did reach users and consumers such as Boris Averbukh without substantial change in its condition.

50. As a direct and proximate result of the actions and inactions of the Delphi Defendants and the defective and unreasonably dangerous airbag system and/or the lack of

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warnings regarding the same, Boris Averbukh suffered physical pain and suffering, mental anguish, emotional injury and trauma, and other related injuries and death.

WHEREFORE, Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh, hereby demands judgment against the Delphi Defendants, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

**COUNT X - STRICT LIABILITY**  
**Individual Plaintiffs' claim against the Delphi Defendants**

51. Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 18 and 46 through 50 as if fully set forth herein.

52. As a direct and proximate result of the actions and inactions of the Delphi Defendants and the defective and unreasonably dangerous airbag system and/or the lack of warnings regarding the same, resulting in the death of Boris Averbukh, a cause of action has accrued in accordance with § 3-901, et. seq., of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland to Plaintiffs and Use Plaintiff for compensation for all the damages, injuries, and losses, past, present, and future, which they have sustained and will sustain in the future including, but not limited to, their severe mental anguish and emotional pain, pecuniary loss, and the loss and deprivation of Boris Averbukh's society, companionship, comfort, care, attention, advice, counsel, services, and support, items that Boris Averbukh would have afforded and rendered to them had he continued to live.

WHEREFORE, Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby demand



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judgment against the Delphi Defendants, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

**COUNT XI - BREACH OF IMPLIED WARRANTY**  
**The Estate's claim against the Delphi Defendants**

53. Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

54. The Delphi Defendants are merchants with respect to the sale of frontal air bag systems.

55. Pursuant to section 2A-212 and/or 2-314, the Delphi Defendants impliedly warranted to Boris Averbukh that the frontal air bag system of the Cobalt would be merchantable and fit for its ordinary and particular purposes.

56. Boris Averbukh relied upon these implied warranties and the Delphi Defendants' status as merchants.

57. The Delphi Defendants breached their warranties to Boris Averbukh because the frontal air bag system of the Cobalt was defective at the time of its sale and not fit for its ordinary and particular purposes in that the front passenger air bag failed to deploy in the subject crash.

58. As a direct and proximate result of the above-described breach of warranty by the Delphi Defendants, Boris Averbukh suffered physical pain and suffering, mental anguish, emotional injury and trauma, and other related injuries and death.

WHEREFORE, Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh, hereby demands judgment against the Delphi Defendants, jointly and severally,

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in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

**COUNT XII - BREACH OF IMPLIED WARRANTY**  
**Individual Plaintiffs' claim against the Delphi Defendants**

59. Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 23 and 53 through 58 as if fully set forth herein.

60. As a direct and proximate result of the breach of warranty by the Delphi Defendants, resulting in the death of Boris Averbukh, a cause of action has accrued in accordance with § 3-901, et seq., of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland to Plaintiffs and Use Plaintiff for compensation for all the damages, injuries, and losses, past, present, and future, which they have sustained and will sustain in the future including, but not limited to, their severe mental anguish and emotional pain, pecuniary loss, and the loss and deprivation of Boris Averbukh's society, companionship, comfort, care, attention, advice, counsel, services, and support, items that Boris Averbukh would have afforded and rendered to them had he continued to live.

WHEREFORE, Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby demand judgment against the Delphi Defendants, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

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**COUNT XIII - NEGLIGENCE**  
**The Estate's claim against the Delphi Defendants**

61. Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

62. The Delphi Defendants owed users and consumers, including Boris Averbukh, a duty to use that degree of care exercised by a reasonably careful designer, manufacturer, and/or seller engaged in the same business as Delphi.

63. The Delphi Defendants breached their duties of care and were thereby negligent in each of the following respects:

a. By failing to design, inspect, test, assemble and/or manufacture the frontal air bag system of the Cobalt to be reasonably safe for the ordinary consumer who possesses knowledge common to the community as its characteristics; and/or

b. By failing to adequately warn consumers, at the time of manufacture/sale and/or post-sale, of the danger from the inability of the frontal airbag system of the Cobalt to safely and properly deploy in reasonably foreseeable types of collisions.

64. As a direct and proximate result of the combined negligence of the Delphi Defendants, Boris Averbukh suffered physical pain and suffering, mental anguish, emotional injury and trauma, and other related injuries and death.

WHEREFORE, Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh hereby demands judgment against the Delphi Defendants, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

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**COUNT XIV - NEGLIGENCE**  
**Individual Plaintiffs' claim against the Delphi Defendants**

65. Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 18 and 61 through 64 as if fully set forth herein.

66. As a direct and proximate result of the combined negligence of the Delphi Defendants, resulting in the death of Boris Averbukh, a cause of action has accrued in accordance with § 3-901, et. seq., of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland to Plaintiffs and Use Plaintiff for compensation for all the damages, injuries, and losses, past, present, and future, which they have sustained and will sustain in the future including, but not limited to, their severe mental anguish and emotional pain, pecuniary loss, and the loss and deprivation of Boris Averbukh's society, companionship, comfort, care, attention, advice, counsel, services, and support, items that Boris Averbukh would have afforded and rendered to them had he continued to live.

WHEREFORE, Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, and with notice to the Use Plaintiff, Alla Averbukh, hereby demand judgment against the Delphi Defendants, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

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**COUNT XV - NEGLIGENCE**  
**The Estate's claim against Defendant Alla Averbukh**

67. Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

68. Defendant, Alla Averbukh, as the driver of the Cobalt, owed Boris Averbukh a duty to maintain proper control over the vehicle and to avoid running off the road and causing an accident. She breached those duties and was negligent in that she failed to exercise proper control over her car and caused it to leave the roadway and strike a tree.

69. As a direct and proximate result of the combined negligence of Alla Averbukh, Boris Averbukh suffered physical pain and suffering, mental anguish, emotional injury and trauma, and other related injuries and death.

WHEREFORE, Plaintiff, Vladamir Averbukh, as Personal Representative of the Estate of Boris Averbukh hereby demands judgment against Alla Averbukh, jointly and severally, in an amount in excess of the jurisdiction limit of Thirty Thousand Dollars (\$30,000) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

**COUNT XVI - NEGLIGENCE**  
**Individual Plaintiffs' claim against Defendant Alla Averbukh**

70. Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, hereby incorporates by reference each and every allegation set forth in paragraphs 1 through 18 and 67 through 69 as if fully set forth herein.

66. As a direct and proximate result of the negligence of Alla Averbukh, resulting in the death of Boris Averbukh, a cause of action has accrued in accordance with § 3-901, et. seq., of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland to Plaintiffs

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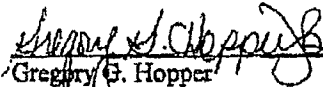
and Use Plaintiff for compensation for all the damages, injuries, and losses, past, present, and future, which they have sustained and will sustain in the future including, but not limited to, their severe mental anguish and emotional pain, pecuniary loss, and the loss and deprivation of Boris Averbukh's society, companionship, comfort, care, attention, advice, counsel, services, and support, items that Boris Averbukh would have afforded and rendered to them had he continued to live.

WHEREFORE, Plaintiffs, Vladamir Averbukh and Alesander Averbukh, in their individual capacities, hereby demand judgment against the Delphi Defendants, jointly and severally, in the amount of Twenty-Five Million Dollars (\$25,000,000.00) plus interest, costs and such other and further relief as the jury and/or Court deem just and proper.

Respectfully submitted,

SALSBURY, CLEMENTS, BEKMAN  
MARDER & ADKINS, L.L.C.

By:

  
Gregory G. Hopper  
300 W. Pratt Street, Suite 450  
Baltimore, Maryland 21201  
Telephone: (410) 539-6633  
Facsimile: (410) 625-9554

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VLADIMIR AVERBUKH, et al. \* IN THE  
Plaintiffs \* CIRCUIT COURT  
v. \* FOR  
ENTERPRISE RAC COMPANY, et al. \* PRINCE GEORGE'S COUNTY  
Defendants \* Case No. \_\_\_\_\_

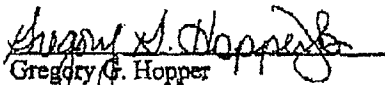
\* \* \* \* \*  
ELECTION FOR JURY TRIAL

Plaintiffs, Vladimir Averbukh, in his individual capacity and as Personal Representative of the Estate of Boris Averbukh, and Alesander Averbukh, in his individual capacity, by and through their attorneys Paul D. Bekman and Gregory G. Hopper of Salsbury, Clements, Bekman, Marder & Adkins, L.L.C., and with notice to the Use Plaintiff, Alla Averbukh, hereby elect to have the above-captioned case heard by a jury.

Respectfully submitted,

SALSBURY, CLEMENTS, BEKMAN  
MARDER & ADKINS, L.L.C.

By:

  
Gregory G. Hopper  
300 W. Pratt Street, Suite 450  
Baltimore, Maryland 21201  
Telephone: (410) 539-6633  
Facsimile: (410) 625-9554

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Circuit Court for Prince George's County

City or County

**CIVIL - NON-DOMESTIC CASE INFORMATION REPORT**

**DIRECTIONS:**

*Plaintiff:* This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a). A copy must be included for each defendant to be served.

*Defendants:* You must file an Information Report as required by Rule 2-323(h).

**THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE**

FORM FILED BY: ☒ PLAINTIFF ☐ DEFENDANT CASE NUMBER \_\_\_\_\_

(Check to insert)

CASE NAME: Vladimir Averbukh vs. Enterprise RAC Company of MD, LLC, et al

Plaintiff

Defendant

JURY DEMAND: ☒ Yes ☐ No Anticipated length of trial: \_\_\_\_\_ hours or \_\_\_\_\_ days

RELATED CASE PENDING? ☐ Yes ☒ No If yes, Case #(s), if known: \_\_\_\_\_

Special Requirements? ☐ Interpretation/communication impairment (Attach Form 1-332 if Accommodation or Interpreter Needed)

Which language \_\_\_\_\_

Which dialect \_\_\_\_\_

☐ ADA accommodation:

**NATURE OF ACTION  
(CHECK ONE BOX)**

**DAMAGES/RELIEF**

**TORTS**

- ☐ Motor Tort
- ☐ Premises Liability
- ☐ Assault & Battery
- ☐ Product Liability
- ☐ Professional Malpractice
- ☒ Wrongful Death
- ☐ Business & Commercial
- ☐ Libel & Slander
- ☐ False Arrest/Imprisonment
- ☐ Nuisance
- ☐ Toxic Torts
- ☐ Fraud
- ☐ Malicious Prosecution
- ☐ Lead Paint
- ☐ Asbestos
- ☐ Other \_\_\_\_\_

**LABOR**

- ☐ Workers' Comp.
- ☐ Wrongful Discharge
- ☐ EEO
- ☐ Other \_\_\_\_\_

**CONTRACTS**

- ☐ Insurance
- ☐ Confessed Judgment
- ☐ Other \_\_\_\_\_

**REAL PROPERTY**

- ☐ Judicial Sale
- ☐ Condemnation
- ☐ Landlord Tenant
- ☐ Other \_\_\_\_\_

**OTHER**

- ☐ Civil Rights
- ☐ Environmental
- ☐ ADA
- ☐ Other \_\_\_\_\_

**A. TORTS**

**Actual Damages**

- ☐ Under \$7,500
- ☐ \$7,500 - \$50,000
- ☐ \$50,000 - \$100,000
- ☒ Over \$100,000

- ☐ Medical Bills \$ \_\_\_\_\_
- ☐ Property Damages \$ \_\_\_\_\_
- ☐ Wage Loss \$ \_\_\_\_\_

**B. CONTRACTS**

- ☐ Under \$10,000
- ☐ \$10,000 - \$20,000
- ☐ Over \$20,000

**C. NONMONETARY**

- ☐ Declaratory Judgment
- ☐ Injunction
- ☐ Other \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION INFORMATION**

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

- A. Mediation ☒ Yes ☐ No
- B. Arbitration ☐ Yes ☒ No
- C. Settlement Conference ☒ Yes ☐ No
- D. Neutral Evaluation ☐ Yes ☒ No

**TRACK REQUEST**

With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL.

**THIS CASE WILL THEN BE TRACKED ACCORDINGLY.**

- ☐ 1/2 day of trial or less
- ☐ 1 day of trial time
- ☐ 2 days of trial time
- ☐ 3 days of trial time
- ☒ More than 3 days of trial time

PLEASE SEE PAGE TWO OF THIS FORM FOR INSTRUCTIONS PERTAINING TO THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM AND COMPLEX SCIENCE AND/OR MEDICAL CASE MANAGEMENT PROGRAM (ASTAR), AS WELL AS ADDITIONAL INSTRUCTIONS IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, PRINCE GEORGE'S COUNTY, OR BALTIMORE COUNTY.

Date 11/6/12 Signature [Signature]



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BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM	
<i>For all jurisdictions, if Business and Technology track designation under Md. Rule 16-205 is requested, attach a duplicate copy of complaint and check one of the tracks below.</i>	
<input type="checkbox"/> Expedited Trial within 7 months of Filing	<input type="checkbox"/> Standard Trial within 18 months of Filing
<input type="checkbox"/> EMERGENCY RELIEF REQUESTED _____ Signature _____ Date _____	
COMPLEX SCIENCE AND/OR MEDICAL CASE MANAGEMENT PROGRAM (ASTAR)	
<i>FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO AN ASTAR RESOURCE JUDGE under Md. Rule 16-202. Please check the applicable box below and attach a duplicate copy of your complaint.</i>	
<input type="checkbox"/> Expedited - Trial within 7 months of Filing	<input type="checkbox"/> Standard - Trial within 18 months of Filing
<b>IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, PRINCE GEORGE'S COUNTY, OR BALTIMORE COUNTY PLEASE FILL OUT THE APPROPRIATE BOX BELOW.</b>	
CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)	
<input type="checkbox"/> Expedited	Trial 60 to 120 days from notice. Non-jury matters.
<input type="checkbox"/> Standard-Short	Trial 210 days.
<input type="checkbox"/> Standard	Trial 360 days.
<input type="checkbox"/> Lead Paint	Fill in: Birth Date of youngest plaintiff _____.
<input type="checkbox"/> Asbestos	Events and deadlines set by individual judge.
<input type="checkbox"/> Protracted Cases	Complex cases designated by the Administrative Judge.
CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY	
To assist the Court in determining the appropriate Track for this case, check one of the boxes below. This information is not an admission and may not be used for any purpose other than Track Assignment.	
<input type="checkbox"/> Liability is conceded.	
<input type="checkbox"/> Liability is not conceded, but is not seriously in dispute.	
<input checked="" type="checkbox"/> Liability is seriously in dispute.	

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CIRCUIT COURT FOR BALTIMORE COUNTY	
<input type="checkbox"/> Expedited (Trial Date-90 days)	Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
<input type="checkbox"/> Standard (Trial Date-240 days)	Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
<input type="checkbox"/> Extended Standard (Trial Date-345 days)	Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
<input type="checkbox"/> Complex (Trial Date-450 days)	Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

## **EXHIBIT B**

FILED

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS,  
SAN ANTONIO DIVISION

APR 20 2011

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY DEPUTY CLERK

KEITH SMITH,  
Plaintiff,

v.

GENERAL MOTORS CORPORATION, and  
DELPHI AUTOMOTIVE SYSTEMS, LLC,  
Defendants.

§  
§  
§  
§  
§  
§  
§

CAUSE NO. SA-09-CA-296-OG

ORDER

Defendant Delphi moves to dismiss plaintiff's case against it. The motion will be denied. First, despite knowing of plaintiff's suit, Delphi concedes that it did not mail him notice of either the initial or final administrative claims bar dates. Notice by publication does not suffice when the claimant is known. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 318 (1950). Second, plaintiff's products liability cause of action is not an "administrative claim" as defined by the bankruptcy court's order— it is neither a claim for payment of an administrative expense under § 503(b) of the Bankruptcy Code nor a claim entitled to priority pursuant to § 507(a)(1) of the Code.

Delphi's motion to dismiss (docket no. 26) is DENIED.

SIGNED this 20 day of April, 2011.

Orlando L. Garcia  
ORLANDO L. GARCIA  
UNITED STATES DISTRICT JUDGE

Hearing Date and Time: September 22, 2011 at 10:00 a.m. (EDT)

CIARDI CIARDI & ASTIN  
Rick A. Steinberg, Esq. (RS-7396)  
100 Church Street, 8<sup>th</sup> Floor  
New York, New York 10007  
Tel: (646) 485-0605  
Fax: (646) 688-4385  
rsteinberg@ciardilaw.com

-and-

Daniel K. Astin (No. 4068)  
Joseph J. McMahon, Jr. (No. 4819)  
919 N. Market Street, Suite 700  
Wilmington, Delaware 19801  
Tel: (302) 658-1100  
Fax: (302) 658-1300  
jcmcmahon@ciardilaw.com

*Attorneys for Vladimir Averbukh (Individually and as Personal Representative for the Estate of Boris Averbukh) and Alesander Averbukh*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
DPH HOLDINGS CORP., <i>et al.</i> ,	:	Case No. 05-44481 (RDD)
	:	Jointly Administered
Reorganized Debtors.	:	
	:	

**CERTIFICATION OF SERVICE**

I, Rick A. Steinberg, do certify that on September 19, 2011, I caused a true and correct copy of the Averbukhs' Response to the Debtors' Motion to Enforce the Permanent Injunction and Cross-Motion for Relief from the Pertinent Orders to be served on the following by Overnight Mail:

DPH Holdings Corp.  
Attn: President  
5725 Delphi Drive  
Troy, MI 48098

Cynthia J. Haffey  
Butzel Long  
150 West Jefferson, Suite 100  
Detroit, MI 48226

Brian Masumoto  
Office of the United States Trustee  
33 Whitehall Street, Suite 2100  
New York, NY 10004

Donald S. Bernstein  
Davis Polk & Wardell  
450 Lexington Avenue  
New York, NY 10017

Dated: New York, New York  
September 19, 2011

CIARDI CIARDI & ASTIN

/s/ Rick A. Steinberg  
Rick A. Steinberg

Attorneys for the Averbukhs